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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	CASE NO. CR 10-0859 RS (NV)
)	
Plaintiff,)	
)	
v.)	PROPOSED ORDER DETAINING
)	DEFENDANT GARY HARDEMAN
GARY HARDEMAN,)	
)	
Defendant.)	

INTRODUCTION

This case came before the Court on June 26, 2013, for a hearing, held via video-conference, regarding the revocation of defendant Gary Hardeman's pre-trial release. Pursuant to a June 18, 2013, violation notice from Pre-Trial Services, the Court held an initial bail review hearing on June 20, 2013, and revoked Hardeman's bond, ordering him provisionally detained pending the June 26, 2013, hearing, so that the parties could discuss whether any condition or combination of conditions of release could ensure the safety of any person and the community. After hearing the arguments of the parties, reviewing the Violation Notice, and hearing the position of Pre-Trial Services, the Court orders Hardeman's bond and release order revoked and orders him detained pending the trial of this matter.

FACTUAL AND PROCEDURAL HISTORY

Defendant Gary Hardeman was charged by indictment on November 23, 2010, with violations of 18 U.S.C. § 2423(c) Engaging in Illicit Sexual Conduct in Foreign Places, and 18 U.S.C. § 2260A Penalties for Registered Sex Offenders. On December 29, 2010, this Court released Hardeman on a \$250,000 bond, \$50,000 of which was secured, to the custody of his parents, Russell and Anna Hardeman. Hardeman's parents also signed on as his sureties. Among other conditions, the bond order required that Hardeman stay at his parents' home on electronic monitoring, with permission to leave only for court appearances, meetings with his attorney, and mental health counseling.

The bond order was modified on October 4, 2011, to permit Hardeman to have visits in his home at the residence of his parents by the children of his brother, in the presence of at least one of the parents of those children. The bond order was modified on December 1, 2011, to allow Hardeman to have in his residence and to use a computer for purposes to be pre-approved by Pretrial Services, that is equipped with software that permits monitoring by Pretrial Services, and also to allow Hardeman to leave his home to exercise in a gymnasium to be approved by Pretrial Services for up to four hours per week. On May 4, 2012, the bond order was modified to permit Hardeman to leave his residence between 12:00pm and 4:00pm to take his mother on errands. On August 15, 2012, the bond order was modified after the death of Hardeman's father to remove him from the bond, and was further modified to remove Hardeman's mother as a custodian due to her failing health. Hardeman's mother remained on the bond as a surety.

On June 18, 2013, Pre-Trial Services provided the Court with a Violation Notice alleging that Hardeman had violated the terms of his bond order. That Violation Notice has since been provided to the parties, and the facts do not appear to be in dispute. According to the Violation Notice, Hardeman's counsel telephoned a Pre-Trial Services Officer on May 8, 2013, to discuss Hardeman's request that his significant other, Mariacarmen Arroyo, a Mexican national who resides in Mexico, be allowed to visit him from June 17, 2013, to June 28, 2013. Ms. Arroyo would be accompanied by her six-year-old son. The Pre-Trial Services officer told Hardeman's counsel to provide more information regarding the request before it would be considered.

On May 13, 2013, Hardeman informed Pre-Trial Services that Arroyo intended to travel from

1 Mexico to visit Hardeman with her six-year-old son and with her daughter by Hardeman, who is 25
2 years old. The visitors would stay in Hardeman's home throughout their visit, which would last from
3 June 17, 2013, to June 28, 2013. Hardeman stated that he had been in a relationship with Ms. Arroyo
4 since 1987, although her six-year-old son was by another man, and that he had not seen her for five
5 years.

6 The Pre-Trial Services officer informed Hardeman that she objected to Hardeman's request,
7 given Hardeman's risk factors and the nature of the pending prosecution. The Pre-Trial Services officer
8 did inform Hardeman that she would reconsider her objection if Hardeman provided sufficient
9 documentation that both parents of the six-year-old boy were aware of Hardeman's criminal record and
10 pending charges, and nevertheless agreed to the visit. The Pre-Trial Services officer informed
11 Hardeman that regardless of her opinion on this request, the Court would ultimately decide whether to
12 approve it. Hardeman reported that he understood.

13 By June 13, 2013, Hardeman had not yet provided Pre-Trial Services with verification that the
14 boy's father approved the boy's visit with Hardeman despite Hardeman's criminal history and the
15 pending proceedings. Hardeman's counsel informed Pre-Trial Services that Hardeman was no longer
16 pursuing the request given the imminent proposed arrival date. The Pre-Trial Services officer contacted
17 Hardeman and advised him that he was not allowed to have contact with the six-year-old boy as the
18 Court had not approved the contact, but that he could contact his counsel to arrange for a court hearing
19 to seek such approval. Hardeman reported that he understood Pre-Trial Services' direction that he not
20 have contact with anyone under the age of 18.

21 On June 14, 2013, the Pre-Trial Services officer spoke with Hardeman by phone. Hardeman
22 reported that he had spoken with his attorney, and understood that he did not have permission to have
23 contact with any minors under the age of 18 with the exception of his brother's children in the presence
24 of his brother. Hardeman reported that Ms. Arroyo, her daughter, and her son would be in California on
25 June 16, 2013, because he had already made travel arrangements for them, and that he would make
26 alternate housing arrangements for the boy. The Pre-Trial Services officer directed Hardeman to
27 provide her with information regarding where the boy would stay, and to do so before they arrived for
28 the visit, via voicemail if necessary. Hardeman never provided this information to Pre-Trial Services.

1 On June 17, 2013, two Pre-Trial Services officers conducted surveillance on Hardeman. While
2 Hardeman was away from his home between 12:00pm and 4:00pm, which Hardeman was allowed to do
3 to take his mother on errands, the Pre-Trial Services officers saw Hardeman with a minor boy.
4 Hardeman was not accompanied by his mother, and he did not appear to be running an errand for her,
5 with the possible exception of grocery shopping. The Pre-Trial Services officers saw Hardeman leave
6 his home with two adults and drive to his brother's house in Pacifica, California, where he picked up
7 two other individuals, one of whom was the minor boy. Hardeman accompanied his apparent guests
8 from Mexico in the community, making several stops, including a coffee shop, a shoe store, and a
9 grocery store. The Pre-Trial Services officers believed that Hardeman was engaging in counter-
10 surveillance tactics such as frequently checking his surroundings, not getting in or out of his vehicle at
11 the same time as other passengers, and signaling a turn in one direction while driving, but then turning in
12 another direction.

13 Pre-Trial Services later reported that Hardeman contacted his Pre-Trial Services officer,
14 ostensibly to negotiate permission to have contact with the six-year-old boy, during the time when he
15 was already in contact with the six-year-old boy.

16 REASONS FOR DECISION

17 The Bail Reform Act sets forth the sanctions for a violation of a condition of pre-trial release at
18 18 U.S.C. § 3148. The available sanctions are revocation of release, a detention order, and prosecution
19 for contempt of court. 18 U.S.C. § 3148(a). The Court may initiate a proceeding for revocation of
20 release, and shall enter an order for revocation of release and detention if, after a hearing, the Court finds
21 either (1) clear and convincing evidence that the defendant has violated any condition of pre-trial
22 release, or (2) probable cause that the defendant has committed a federal, state, or local crime while on
23 pre-trial release, and either (1) that based on the factors set forth in Section 3142(g) of the Bail Reform
24 Act, there is no condition or combination of conditions of release that will assure that the defendant will
25 not flee or pose a danger to the safety of any other person or the community, or (2) that the defendant is
26 unlikely to abide by any condition or combination of conditions of release. 18 U.S.C. § 3148(b).

27 In this case, the facts underlying Hardeman's violation are not in dispute. Hardeman's position
28 is not that he did not violate the conditions of his pre-trial release, but that he should not be detained as a

1 result of that violation. Accordingly, the Court finds, by clear and convincing evidence, that Hardeman
2 violated a condition of his pre-trial release when he had personal contact with a six-year-old boy without
3 seeking permission from the Court or Pre-Trial Services, and despite being told by Pre-Trial Services
4 that he did not have such permission.

5 The Court also finds that Hardeman is unlikely to abide by any condition or combination of
6 conditions of pre-trial release. Hardeman's conversation with a Pre-Trial Services officer, in which he
7 negotiates for permission to have personal contact with a six-year-old boy after he has already had
8 personal contact with him, shows deceit and a willingness to avoid the restrictions of pre-trial release
9 when it suits him. Given the current charges against Hardeman and his criminal history, the violation is
10 not just technical, but central to Pre-Trial Services' function to ensure the safety of the community. Pre-
11 Trial Services has informed the Court that it no longer trusts Hardeman to follow its directives while on
12 pre-trial release, and that any condition or combination of conditions of release would have to be based
13 on some degree of trust.

14 Hardeman has offered to revert to restrictions very similar to those that governed his release after
15 his initial detention hearing in December 2010. Essentially, Hardeman proposes to remain at home on
16 electronic monitoring, including GPS monitoring, with permission to leave home only for court
17 appearances, visits with counsel, and perhaps counseling. The Court finds it unlikely that Hardeman
18 would comply with these conditions. Unlike the original release order, Hardeman has no custodians.
19 His father has passed away and his mother is too ill to watch over him. Pre-Trial Services has stated that
20 given Hardeman's recent violation, it no longer trusts Hardeman to comply with release conditions, and
21 that these conditions require a level of trust to be workable.

22 CONCLUSION

23 For the foregoing reasons, the Court hereby revokes defendant Gary Hardeman's bond and
24 orders him detained in the custody of the U.S. Marshals Service pending the trial of this matter.

25 SO ORDERED.

26 DATED: 6/28/13



HON. NANDOR VADAS
United States Magistrate Judge